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Return Date & Time:  
JULY 13, 2011 9:00 AM

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----X Chapter 13 Case No: 110-51381-JF  
IN RE:

YANIRA GAUDELLI,

Debtor.

NOTICE OF MOTION

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PLEASE TAKE NOTICE, that upon the within application, the Chapter 13 Trustee will move this court before the Honorable Jerome Feller, U.S. Bankruptcy Judge, at the United States Bankruptcy Court, 271 Cadman Plaza East, Brooklyn, New York, Courtroom 3554 on JULY 13, 2011 at 9:00 AM, or as soon thereafter as counsel can be heard, for an Order pursuant to 11 U.S.C. Section 1307(c) for cause, dismissing this Chapter 13 case and for such other and further relief as may seem just and proper.

Responsive papers shall be filed with the Bankruptcy Court and served upon the Chapter 13 Trustee, Marianne DeRosa, Esq., no later than seven (7) business days prior to the hearing date set forth above. Any responsive papers shall be in conformity with the Federal Rules of Civil Procedure and indicate the entity submitting the response, the nature of the response and the basis of the response.

Date: Jericho, New York  
June 23, 2011

/s/ Marianne DeRosa  
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MARIANNE DeROSA, TRUSTEE  
115 EILEEN WAY, SUITE 105  
SYOSSET, NEW YORK 11791  
(516) 622-1340

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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JULY 13, 2011  
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IN RE:

Chapter 13 110-51381-JF

YANIRA GAUDELLI,  
Debtor.

APPLICATION

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TO THE HONORABLE JEROME FELLER, U.S. BANKRUPTCY JUDGE:

Marianne DeRosa, Chapter 13 Trustee in the above-captioned estate, respectfully represents the following:

1. The Debtor filed a petition under the provisions of 11 U.S.C. Chapter 13 on DECEMBER 3, 2010, and, thereafter, Marianne DeRosa was duly appointed and qualified as Trustee.

2. The Debtor's proposed Chapter 13 Plan, (hereafter "The Plan"), dated and filed with the Court on December 3, 2010, and reflected in the Court's docket as number 3 provides for a monthly Plan payment of 576.00 per month for a period of 60 months. Additionally, the Plan provides for full repayment to all filed secured and priority proofs of claim.

3. The Trustee objects to the confirmation of the Plan because the Debtor's proposed Plan payment is insufficient to pay general secured and priority claims in full and the Debtor's supporting budget, Schedules I and J, filed with the Court on December 3, 2010 and reflected in the Court's docket as number 1, does not indicate an ability to increase the plan payments, therefore the Debtor cannot comply with the Plan as required by 11 U.S.C. §1325(a)(6).

4. Furthermore, the Debtor has failed to:

- a. provide the Trustee with proof of post-petition mortgage payments seven business days before the first meeting of creditors as required by E.D.N.Y. LBR 2003-1(a)(vi);
- b. provide the Trustee with proof of post-petition mortgage payments seven days before the first date set for confirmation of the Chapter 13 Plan as required by E.D.N.Y. LBR 2003-1(b)(i).

5. The Plan cannot be confirmed and as a result a delay has occurred that is prejudicial to the rights of creditors. The case must be dismissed under 11 U.S.C. § 1307(c)(1) and (c)(5).

6. Each of the foregoing constitutes cause to dismiss this Chapter 13 case within meaning of 11 U.S.C. §1307(c).

7. During the pendency of this bankruptcy estate, the Trustee has incurred costs and expenses in the ordinary course of administering this case and seeks reimbursement of \$250.00 to cover these expenses.

WHEREFORE, the Chapter 13 Trustee respectfully requests that this Court enter an Order denying confirmation and dismissing this Chapter 13 case, and granting the Chapter 13 Trustee the sum of \$250.00 to be deducted from the Debtor's net receipts, if any, for administrative costs and expenses incurred during the pendency of this case, and for such other and further relief as may seem just and proper.

Dated: Jericho, New York  
June 23, 2011

/s/ Marianne DeRosa  
Marianne DeRosa, Trustee

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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Chapter 13 Case No: 110-51381-JF

IN RE:

YANIRA GAUDELLI,

CERTIFICATE OF SERVICE  
BY MAIL

Debtor.

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This is to certify that I, DANI M. BOYER, have this day served a true, accurate and correct copy of the within Notice of Motion and Application by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to each of the following persons at the last known address set forth after each name:

YANIRA GAUDELLI  
16 YORK STREET  
HICKSVILLE, NY 11801

KARAMVIR DAHIYA, ESQ.  
350 BROADWAY, RM 412  
NEW YORK, NY 10013

WELLS FARGO BANK  
C/O STEVEN J. BAUM, PC  
220 NORTHPOINTE PKWY, STE G  
AMHERST, NY 14228

ASCENSION CAPITAL GROUP  
C/O JP MORGAN CHASE  
PO BOX 201347  
ARLINGTON, TX 76006

WELLS FARGO BANK  
C/O BERKMAN, HENOCK, ET AL  
100 GARDEN CITY PLAZA  
GARDEN CITY, NY 11530

This June 23, 2011

/s/DANI M. BOYER  
DANI M. BOYER, Paralegal  
Office of the Standing Chapter 13 Trustee  
Marianne DeRosa, Esq.  
115 Eileen Way, Suite 105  
Syosset, New York 11791  
(516) 622-1340

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YANIRA GAUDELLI,

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NOTICE OF MOTION, APPLICATION  
and  
CERTIFICATE OF SERVICE

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MARIANNE DeROSA, TRUSTEE  
115 EILEEN WAY, SUITE 105  
SYOSSET, NEW YORK 11791  
(516) 622-1340

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